

**EXHIBIT A**



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## MEETING NOTES

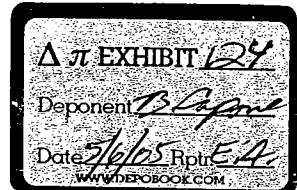
**DATE OF MEETING:** 21 May 2003

**PROJECT:** North Brookfield Jr/Sr High School  
D&W Project No. 00-404A

**SUBJECT:** Status and Progress of Construction Meeting held in High School Library  
at 2:50p.m.

<b>ATTENDING:</b>	Ed O'Malley	Principal
	Robert O'Neill	Superintendent of Schools
	Don Gillette	Building Committee, Co-Chair
	Edward Wilkins, Jr.	Building Committee
	Greg Kline	Building Committee
	Larry Hasensus	Selectman
	Michael P. Sheehan	E.J. Sciaba
	Matt Daly	E.J. Sciaba
	Mike Haynes	E.J. Sciaba
	Bert Capone	Attorney for E.J. Sciaba
	Ken Walton	Attorney for Dore and Whittier, Inc.
	Thomas W. McEnaney	Kopelman and Paige
	Deborah Griffin	Holland and Knight, Attorney for Surety
	Richard Anastasio	Greyhawk/Kemper Surety
	Stephen Beatty	Kemper Surety
	Tom Barden	Dore and Whittier, Inc.
	Chris Conway	Dore and Whittier, Inc.
	Lee P. Dore	Dore and Whittier, Inc.
	R. John Dore	Dore and Whittier, Inc.
	Harald Aksdal	Dore and Whittier, Inc.

1. Tom McEnaney opened the meeting with an introduction. All present introduced themselves. Basically, the meeting was held to address Owner concerns with the progress of the construction and to, generally and specifically, address items in the letter from the Owner to Kemper Surety dated 23 April 2003.



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2. Neither the Surety nor EJS attorney had received a copy of the letter. Copies were made and distributed and time was allowed for EJS representatives and Surety representatives to review the letter.
3. It was noted that Ed Sciaba was unable to attend this meeting.
4. Owner questions presented to EJS: What is EJS going to do to bring this project back on schedule? When will it be completed? Will staffing be changed and/or increased? Will monies owed to subcontractors and suppliers be paid?
  - a. Staffing change has taken place and a new project manager has been assigned to this project.
  - b. A new schedule and recovery is being worked on, however no firm date as to when the schedule will be complete. However, a firm schedule will be provided prior to the next requisition.
  - c. EJS noted the major problem with this job has been cash flow and related to that has been three other joint venture projects, which consumed EJS cash, and are now concluded.
5. Owner question to the Surety: Is Kemper Surety stepping in to assist EJS?
  - a. EJS is putting together a review and report of the company's financial status for the Surety's review. The report is due to the Surety this Friday (23 May 2003). Surety will review report to determine what and if assistance is required.
  - b. Owner noted concern that letter from them to Kemper is a month old, why such a late reaction? No answer was given.
6. Open discussion:
  - a. Reference was made to the last partnering session (October 2002), and basically EJS was given the opportunity to set their own schedule. The milestones that were given by EJS have not been met.
  - b. EJS referenced cash flow problem; not getting March requisition monies and not getting April requisition monies and structural steel delays as major causes of scheduling problems.
  - c. It was noted that required Release of Liens were not submitted and the pencil requisition for March was not provided to Dore and Whittier for review until 7 April 2003.
  - d. EJS questioned procedure of requiring liens. Owner stated it was a contract requirement.
  - e. It was noted that scheduling problems and paying of subcontractors and vendors has been an issue long before this March/April 2003 requisition.
  - f. EJS noted concern of some subcontractors for payment was unrelated to this project.

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7. EJS's attorney asked: what are the issues? Owner noted the letter of 23 April defined Owner's concerns. It was decided to review the letter of 23 April 2003, item by item (10 items) and to identify if item is basically a scheduling issue or a funding issue.

**Item (1) Draw Down Schedule:** Draw Down Schedule and Construction Schedule are being worked on. Both will be submitted with the next Application for Payment. This item is a scheduling item and will require time to update. EJS noted that the Substantial Completion date can be met. Meeting requirements will be difficult, but November is accurate. EJS further noted that cash flow is the major problem, however hopefully a solution is at hand.

**Item (2) Staffing:** EJS does not feel there is or has been a staffing problem. Owner noted that by using the average of requisition amounts paid that all indications are that staffing for this project is low. EJS noted staffing will increase dramatically once the structural steel phase is completed. Also, EJS noted a majority of materials are on site and ready to be installed. It was noted this is a funding issue as the cash flow problem has directly affected staffing.

**Item (3):** EJS is reviewing the proposal request log and PR's issued and related CCD's. EJS noted they do not agree with the procedure of how PR's and CCD's were handled even if it is part of the contract. Owner noted "...as per contract we have the right..." EJS noted: "...will be responding in detail in a couple of weeks..." Kemper Surety requested info. in relation to Proposal Request, CCD and timeline.

**Item (4): Concern for flow of information from EJS to the subcontractors:** EJS has reviewed and forwarded all information from the Architect to the subcontractors. Some replies have been received and EJS is waiting for all subcontractor replies before reviewing with the Architect.

**Item (5) Concern for subcontractor payment of funds:** Greenwood Roofing was discussed and how they are expected back on site once they have been paid. EJS is waiting for their return. This is a funding issue.

**Item (6):** Scheduling item was addressed previously. See Item (1) above.

**Item (7):** Note EJS will have new project manager at job meetings and this will be his only project. EJS noted this item is a past issue and is now resolved. This is a staffing issue.

**Item (8):** Concern for the past condition of the Application for Payments appears to have been corrected with the new project manager and evidenced by the April requisition application submitted.

**Item (9):** EJS noted that the issue with payment of benefits for employees on site has been cleared up.

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**Item (10) Project Schedule and Completion:** Concern expressed for latest schedule submitted by EJS and inadequately of schedule in sequencing of work, milestones not met and scheduling window installation before walls are up; painting walls before they are installed etc. EJS noted to refer back to Item (1).

8. Kemper Surety requested copies of direct payment claims and claims of subcontractors and vendors who say they have not been paid. Owner will provide.
9. Discussion on project time frame and recovery; EJS noted the following:
  - a. Structural steel erection set project back.
  - b. Hard winter and wet spring set project back.
  - c. EJS realizes they have a lot of work to do.
  - d. Structural steel issue is behind them now.
  - e. Roofer getting back on site is critical.
  - f. As noted previously, a lot of material is on site ready to be installed.
10. EJS repeated that their major problem right now is cash flow. Kemper Surety noted that they will review with EJS the status and condition of this project, and they realize their assistance will be required. What is required will be determined by Surety with EJS. Surety will keep Owner informed of the situation.
11. Owner expressed the following concerns:
  - a. Anticipate late completion of this project.
  - b. Continued inaccurate schedule with unrealistic milestones and less than honest information.
  - c. November completion does not seem realistic.
  - d. Continued promises with no on site construction results.
12. Owner requested that EJS provide and document a real schedule.
13. EJS noted that the new project manager, Matt Daly, will be full time on this project and that North Brookfield is his only project.
14. Owner asked what involvement the Surety would have in this project. Surety noted that that is yet to be determined and will be after review with EJS.
15. Owner asked what plans Surety had if EJS fell apart and/or can't right the ship? Kemper Surety does not plan or foresee that as a possibility at this time. Up to now the Surety has seen this as a "quiet job". Surety did note however that this project "...should have come to my attention and didn't."

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16. Owner requested information on the reporting and monitoring procedures, specifically in reference to this job and EJS. Kemper Surety noted the following:
  - a. Sureties are financial in nature and hire consultants to review actual construction projects.
  - b. Sureties do not monitor construction schedules.
  - c. Sureties normally wait for their clients and/or Owners to notify them of concerns before they react.
  - d. This project is now "beeping on Kemper's radar".
17. It was noted that this project is frustrating to the Owner and Design Team especially as it related to EJS meeting schedules and deadlines. Surety noted they will provide assistance as needed to EJS, and will expect EJS to follow through.
18. It was verified that there are two substantial completion dates:
  - a. 15 August 2003 for the new building.
  - b. 15 December 2003 for the entire project including demolition of the existing building and related site work.
  - c. It was further noted that liquidated damages are set at \$1000.00 per day. For the building completion and additional \$1,000.00 per day for the site completion.
19. Kemper Surety requested a copy of the contract, special conditions and change orders. Owner will provide through the Architect.
20. EJS request response to their request for winter delay. D&W will verify.

The above is my summation of our meeting. If you have any additions and/or corrections, please contact me for incorporation into these minutes. After 10 days, we will accept these minutes as an accurate summary of our discussion and enter them into the permanent record of the project.

Sincerely,

**DORE AND WHITTIER, INC.**  
Project Managers • Architects

Harald Aksdal, AIA  
Project Architect

HA:elc

cc: Mr. Ed O'Malley, Principal, North Brookfield Public Schools  
Mr. Robert O'Neill, Superintendent of Schools  
Mr. Chris Conway, Construction Manager  
RJD/JFT/LPD/GOJ/File

**EXHIBIT B**

1 A Yes. He introduced himself that way along with I guess  
2 Mike Sheehan at the time.

3 Q Was there any representation by Sciaba or anyone on  
4 Sciaba's behalf that they would be able to complete the  
5 North Brookfield project at the May twenty-first, 2003  
6 meeting?

7 A No.

8 Q Was there discussion concerning cash flow issues that  
9 Sciaba was having at that meeting?

10 A On that particular project, yes. Obviously Mr. Capone  
11 and Mr. Sheehan had indicated they were looking for the  
12 pending payments, and of course I heard the town's  
13 position that it was making a condition.

14 Q Wasn't the condition that was placed on the pending  
15 payment requisitions the failure of Sciaba to produce  
16 lien waivers that were required?

17 A That was one of them, that the schedule was also -- I  
18 don't know that I heard a distinction in importance  
19 between the two.

20 Q Did the -- was the representation made, that you recall,  
21 that the schedule would come with the next payment  
22 requisition that Sciaba was submitting to the town?

23 A With it? I don't know that I recall that being a  
24 condition, that it would come with it. Certainly it was

1 withheld had in fact been released.

2 That was -- that was the main topic of  
3 that discussion.

4 Q (By Mr. McEnaney) Okay. And subsequently have you had  
5 further conversations with Mr. Beatty about that?

6 A About the payments and about --

7 Q Just about the May twenty-first meeting.

8 A Yes.

9 Q And when were those discussions?

10 A Over the course of the last two years I would say we've  
11 had that discussion on and off a number of times.

12 Q Was it the same substance that you just testified to or  
13 did you discuss other matters?

14 A Pretty much that --

15 Q Okay.

16 A -- particular subject.

17 Q Did you discuss any other issues besides the release of  
18 payments in May or was that primarily the discussion?

19 A That was the primary. That was the primary subject.

20 Q At that meeting in May, 2003, did the surety at any time  
21 ask the town to withhold payments from Sciaba?

22 A Not that I recall, no.

23 Q Did the surety at any time ask the town to make payments  
24 to the surety as opposed to Sciaba?

1 A The surety did not make that request, no.

2 Q Did it ask the town to make checks jointly payable to  
3 Sciaba and the surety?

4 A It did not, and -- no.

5 Q Okay. Are those all options that were available to the  
6 surety at that time?

7 MS. GRIFFIN: Objection.

8 THE WITNESS: At that time, absent a  
9 default and absent a -- absent a default or a  
10 specific demand by the obligee, I don't know  
11 that that wouldn't have been viewed as  
12 interference, you know, by the surety at that  
13 particular time or prejudicial to Sciaba.

14 Q (By Mr. McEnaney) And when you say interference or  
15 prejudicial to Sciaba, what do you mean by that?

16 A Well, the condition imposed upon the release of the  
17 payment was specifically related to performance, or  
18 his -- you know, a condition that was required under your  
19 contract, produce the lien waivers and, you know, produce  
20 an updated schedule.

21 So being a contractual matter, the surety is not  
22 obligated at that point to make that request. In fact,  
23 can be -- it just is not something that they would do.

24 Q So you're saying they're not obligated to do it, but

1 could they do it --

2 MS. GRIFFIN: Objection.

3 Q (By Mr. McEnaney) -- is the question.

4 MS. GRIFFIN: Objection.

5 THE WITNESS: Could they do it? If  
6 there was a specific request made by -- there  
7 would have to be, you know, certain conditions  
8 and circumstances made where it is a  
9 three-party contract and so as not to impinge  
10 the rights of one of the three parties, I  
11 think it would almost have to be by mutual  
12 agreement.

13 Q (By Mr. McEnaney) Did the surety ever have any  
14 discussions with Sciaba related to having payments made  
15 to a custodial account or to the surety or jointly to  
16 Sciaba and the surety in May of 2003?

17 A Not at that time, no.

18 Q Subsequently were there any discussions in that regard?

19 A What do you mean subsequently?

20 Q After the May twenty-first, 2003 meeting.

21 A Well, I guess within actually a request -- you know what?  
22 Can you repeat the exact question again?

23 MR. MCENANEY: Can you read that back,  
24 please?

1 (Court reporter read back question).

2 THE WITNESS: Not for custodial  
3 payments, no.

4 Q (By Mr. McEnaney) For joint payments?

5 A Not joint payments, no.

6 Q For any issues concerning upcoming or pending payments to  
7 Sciaba?

8 A Pending payments? No.

9 Q So what were the discussions about, then?

10 A Well, there was a request for financing and concurrent  
11 with a -- a voluntary notice of default.

12 Q Okay. And we can -- we'll talk about that.

13 A It was about a week later.

14 Q Okay.

15 A It was about -- actually, it was thereafter. I'm not  
16 quite sure of the timing.

17 Q Now, you testified that you have worked on a number of  
18 projects involving surety in your capacity at Gray Hawk.  
19 In your experience have any sureties ever required  
20 payments be made to them instead of the contractor or to  
21 have checks made jointly to the surety and the contractor  
22 prior to a default?

23 MS. GRIFFIN: Objection.

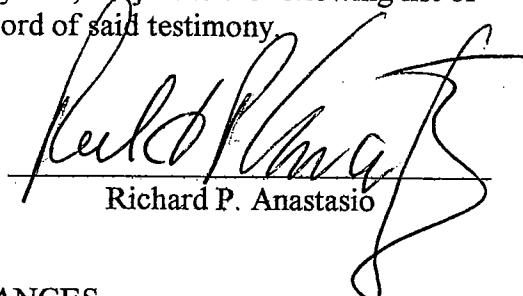
24 Q (By Mr. McEnaney) A formal declaration of default?

**ERRATA SHEET**  
**Deposition of Richard P. Anastasio**

I, Richard P. Anastasio, do hereby certify that I have read the foregoing transcript of my testimony taken on May 19, 2005, and further certify that, subject to the following list of corrections, said transcript is a true and accurate record of said testimony.

Signed under the pains and penalties of perjury.

Dated this 14<sup>th</sup> day of July, 2005.

  
 Richard P. Anastasio

**LIST OF CHANGES**

<i>Page/Line</i>	<i>Change</i>	<i>Reason</i>
Throughout	Change "Gray Hawk" to "Greyhawk"	Spelling
Throughout	Change "Dorr" to "Dore"	Spelling
5:11	Change "Wood Hull" to "Woodhull"	Spelling
8:2	Delete "situations"	Stenographic
9:10	Change "were" to "or"	Stenographic
10:10	Change "Doreen" to "Dore &"	Stenographic
13:2	Change "Grummond" to "Grumman"	Stenographic
13:3	Change "McDonald" to "McDonnell"	Stenographic
19:1	Change "Lunderman" to "Lumbermens"	Stenographic
19:23	Change "Chemical" to "Chemico"	Stenographic
21:8, 9	Change "Professionals," to "Professional"	Stenographic and punctuation
24:6	Add "recall any."	Stenographic
24:10	Change "agreed" to "agree"	Stenographic
24:19	Insert "only" after "could"	Stenographic
25:13	Should say: "way it evolved. It was not one task. They were all kind of going"	Stenographic and punctuation
25:17	Change "or" to "and"	Stenographic
26:15	Change "where" to "the way"	Stenographic
27:3-4	Change "Iantuano" to "Iantuono"	Spelling
27:5-6	Change "Remeau" to "Rameau"	Spelling
28:3	Add new sentence after "Tunnel" When the Obligee rescinded its declaration of default, Greyhawk and the Surety completed the work with the Surety's Bond Principal .	Clarification
29:11	Change "five, six" to "-5, -6"	Spelling
31:11	Change "got" to "that got me"	Stenographic
31:22	Change "incidence" to "incident"	Stenographic
32:15	Insert "reason" after "the"	Stenographic
33:4	Change "he's" to "he was"	Stenographic

147:13	Change "this deal" to "the steel"	Stenographic
155:24	Change "the" to "there"	Stenographic
157:16	Change "Remeau" to "Rameau"	Spelling
166:4	Change "rec's" to "req's"	Stenographic
174:16-17	Should say: "paper that asked them to advise me of the completion dates on which they based their most competitive price to complete."	Memory refreshed.
180:3	Change "Dalbare" to "D'Albert"	Spelling
185:22; 186:1	Should say: "I did not discuss the specific dates in the agreement but I discussed the request that the bidders advise me of the completion dates on which they based their most competitive price to complete."	Memory refreshed
186:19- 187:3	I now recall that I did not specify a different set of dates for the best and final round. Instead, I asked that the bidders advise me of the completion dates on which they based their most competitive price to complete.	Memory refreshed.
197:19, 22	Change "Maher" to "Meagher"	Spelling
198:5	Change "Maher" to "Meagher"	Spelling
204:6	Change "this deal" to "the steel"	Stenographic
205:15	Change "allucidate" to "elucidate"	Spelling
212:14	Change "must" to "would"	Stenographic
219:19	Should say: "That's not something you would see if the work was done properly."	Stenographic
235:5	Delete "in terms"	Stenographic
238:3	Change "strong" to "smart"	Stenographic
238:12	Change "appoint" to "opine"	Stenographic
240:21, 22	Change "subbidder" to "sub-bidder"	Punctuation

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**EXHIBIT C**



North Brookfield Public Schools  
Office of the Superintendent  
10 New School Drive, North Brookfield, MA 01535  
Telephone (508) 867-9821 Fax (508) 867-8148  
e-mail ~ roneill@nbschools.org



May 30, 2003

Mr. Stephen Beatty  
American Manufacturers Mutual Insurance Company  
One Kemper Drive  
Long Grove IL 60049  
Bond No. 3SE057856

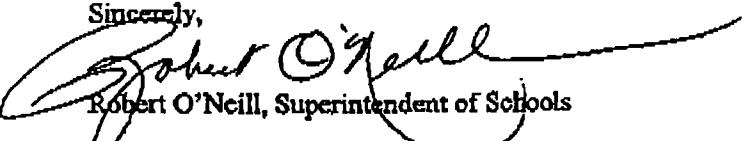
Dear Mr. Beatty:

As a follow-up to our meeting of 21 May 2003, please accept this summation of the events.

1. The meeting was held to address the concerns documented in the letter from the owner to Kemper Surety dated 23 April 2003.
2. E J Sciaba was not in attendance.
3. A new project manager, Matt Daly, has been assigned on a full time basis.
4. A new project schedule will be completed and provided no later than the next application for payment request.
5. E J Sciaba will provide Kemper with a report on the company's financial status by Friday 23 May 2003.
6. Lien requirement procedures are a contract requirement.
7. The delayed processing of payment for March 2003 was due to lacking lien information and a late submission (7 April 2003) by E J Sciaba.
8. E J Sciaba project superintendent (Mike Haynes) indicated that November 2003 is a reasonable, accurate substantial completion date for the building.
9. Kemper Surety (Stephen Beatty) would like information on the PR's and CCD's.
10. The return of Greenwood industries is a funding issue.
11. Front end specification documents have been transmitted to your office as requested.

If you have any corrections, please contact me for incorporation into these minutes.

Sincerely,

  
Robert O'Neill, Superintendent of Schools

o.c. Tom McEnaney  
Jim Murray  
Lee Dore  
Bert Capone  
Mike Sheehan

**EXHIBIT D**

12:51:43 1 from the May 21st meeting?

12:51:46 2 A. Pretty much so.

12:51:47 3 Q. Now, who said something about Sciaba's  
12:51:52 4 financial issues being behind them?

12:51:54 5 A. I believe -- I'm trying to think. I'm not  
12:52:07 6 sure if it was Mr. Sheehan or Mr. Daly, but I  
12:52:11 7 believe the Sciaba representatives provided that  
12:52:17 8 information. As I recall, it may have been  
12:52:24 9 Mr. Sheehan specifically.

12:52:26 10 Q. And did he -- Are those the words he used,  
12:52:32 11 or is that what you took from his remarks?

12:52:34 12 A. That's probably my interpretation of his  
12:52:38 13 remarks.

12:52:38 14 Q. You said that Sciaba gave assurance that  
12:52:43 15 they would still meet reasonable deadlines. Who  
12:52:46 16 said that?

12:52:46 17 A. Again, I would -- I can't recall  
12:52:52 18 specifically, but I would guess it was Mr. Sheehan  
12:52:57 19 or Mr. Daly.

12:52:59 20 Q. Did you believe the assurance that Sciaba  
12:53:07 21 would still meet reasonable deadlines?

12:53:10 22 A. I had no reason not to believe it given the  
12:53:15 23 fact that Sciaba and the surety were both present  
12:53:20 24 and were expressing optimism that things would get  
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12:53:25 1 better.

12:53:26 2 And I guess we were consistently

12:53:27 3 optimistic through the process and hoped that an

12:53:32 4 infusion of funds and manpower would allow the

12:53:36 5 project to be successful.

12:53:38 6 Q. Did anybody say what Sciaba thought

12:53:41 7 reasonable deadlines were that they would meet?

12:53:43 8 A. I don't recall specifically. October,

12:53:54 9 November rings a bell. Along those lines.

12:53:57 10 Something that was still doable.

12:54:06 11 Q. And October or November of 2003?

12:54:09 12 A. I believe so.

12:54:10 13 Q. And October or November 2003 they would

12:54:16 14 complete the new building; is that what you

12:54:19 15 understood them to say?

12:54:19 16 A. I believe so.

12:54:20 17 Q. And that would be within the substantial

12:54:24 18 completion date; is that right?

12:54:26 19 A. I'm not exactly sure.

12:54:31 20 Q. Now, you said that you heard or

12:54:37 21 understood -- strike that.

12:54:38 22 You said you understood the surety to

12:54:40 23 say it could provide the necessary support for

12:54:44 24 Sciaba to complete, but you didn't hear them say  
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12:54:47 1 that they had made a decision to do that, did you?

12:54:50 2 A. No, I don't believe so.

12:54:52 3 Q. Did you hear anyone at the meeting say that  
12:54:58 4 Sciaba was going to be unable to complete?

12:55:04 5 A. I don't believe so.

12:55:06 6 Q. Do you recall anything of the discussion  
12:55:17 7 about what needed to happen before the town would  
12:55:21 8 release payments to Sciaba?

12:55:23 9 A. The lien waivers had to be provided before  
12:55:33 10 payment could be made.

12:55:40 11 Q. Wasn't it also stated that a new realistic  
12:55:44 12 schedule needed to be submitted before payment would  
12:55:47 13 be made?

12:55:47 14 A. I don't believe so. The schedule was always  
12:55:52 15 part of the discussion, but I don't recall, at least  
12:55:58 16 as I recollect, that it was ever a requirement that  
12:56:01 17 the lien waivers were the sole requirement --  
12:56:03 18 contractual requirement in order to provide payment.

12:56:09 19 Q. Do you recall any other discussion about  
12:56:19 20 payment to Sciaba?

12:56:30 21 A. Not really.

12:56:31 22 Q. Do you recall the surety's representative  
12:56:33 23 asking to be advised if the town was planning to  
12:56:36 24 make any payments to Sciaba?

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1^• 56:40 1 A. I don't recall specifically.

12:56:50 2 Q. Do you recall Sciaba discussing what steps

12:57:04 3 it needed to take before it could prepare and submit

12:57:07 4 a new schedule?

12:57:12 5 A. I recall some discussion, yes.

12:57:13 6 Q. What do you recall about that?

12:57:15 7 A. As I recall, there were assurances that they

12:57:20 8 would provide a schedule, an updated schedule.

12:57:33 9 Q. Do you recall their enumerating steps they

12:57:39 10 needed to take before they would be in a position to

12:57:41 11 do that?

12:57:42 12 A. Not specifically. I do recall the emphasis

12:57:52 13 on Matt Daly being there full-time and having the

12:57:59 14 ability to provide appropriate schedule information.

12:58:08 15 Q. Now, before we went back on the record after

12:58:11 16 the lunch break you reviewed Exhibit 51, did you

12:58:15 17 not?

12:58:16 18 A. This one here?

12:58:19 19 Q. Right.

12:58:22 20 A. Is that yes?

12:58:23 21 A. Yes.

12:58:23 22 Q. Have you seen Exhibit 51 before today?

12:58:33 23 A. I believe, yes.

12:58:35 24 Q. When did you first see a copy of Exhibit 51?  
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